

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

v.

HIGHLINE SCHOOL DISTRICT NO. 401, a
municipal corporation; SCHOOLS
INSURANCE ASSOCIATION OF
WASHINGTON; R.T. an individual,

Defendants.

**COMPLAINT FOR DECLARATORY
RELIEF**

I. PARTIES

1. Plaintiff St. Paul Fire and Marine Insurance Company (“St. Paul”) is a foreign insurance company licensed to conduct business in the State of Washington.

2. St. Paul is organized under the laws of the State of Connecticut with its principal place of business located in the State of Connecticut.

3. Highline School District No. 401 (the “District”) is a municipal corporation organized under the laws of the State of Washington with a principal place of business in King County, Washington. On information and belief, the District provides public education services

1 through its schools, including Evergreen High School (“Evergreen”), which is located in King
2 County.

3 4. On information and belief, R.T. is an adult woman who attended Evergreen High
4 School at all relevant times hereto.

5 5. On information and belief, R.T. is a resident of the State of Washington.

6 6. Schools Insurance Association of Washington (“SIAW”) is a direct property and
7 casualty insurance carrier organized under the laws and regulations of Washington State.
8 SIAW’s principal place of business is located in Ephrata, Washington.

9 **II. JURISDICTION AND VENUE**

10 7. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1332 as the
11 amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and diversity amongst
12 the parties is complete.

13 8. Venue is proper with this Court pursuant to 28 U.S.C. §1391 as this claim involves
14 the District’s claim for insurance proceeds stemming from an alleged loss occurring in King
15 County, Washington.

16 9. Venue is also proper with this Court pursuant to 28 U.S.C. §1391 as the District
17 resides in in this judicial district.

18 **III. RELEVANT FACTS**

19 ***1. The Underlying Lawsuit***

20 10. On November 7, 2017, the Underlying Lawsuit¹ was filed against the District in
21 Washington State Superior Court in and for King County.

22 11. On September 6, 2017 R.T. filed a Notice of Tort Claim against the District.

23

¹ *R.T. v. Highline School District No. 41.*, Case No. 17-2-28999-8 SEA.

1 12. R.T. alleges that in 1994 she was a sixteen year old student at Evergreen enrolled
2 in a dance class at the school taught by 2 District employees.

3 13. R.T. alleges that during one class the teacher brought a man to the class named
4 LaShawn Ferguson (“Ferguson”) and advised he would be helping to teach the class.

5 14. R.T. further alleges that her dance teachers advised her that she would need to
6 improve her grades if she wanted to continue dancing and that she should seek tutoring.

7 15. R.T. asserts the dance instructors provided her with an address to go to be tutored.

8 16. Upon arriving at that address, R.T. alleges that Ferguson was waiting for her and
9 raped her at that time.

10 17. Soon after the rape, R.T. alleges she withdrew from Evergreen and moved to New
11 York, where she subsequently gave birth to baby that she alleges was conceived during the time
12 of the rape.

13 18. Over the next 23 years R.T. raised the child.

14 19. Ferguson is alleged to now be a convicted sex offender in Washington.

15 20. R.T. alleges that due to the District’s negligence, she was a victim of childhood
16 sexual abuse.

17 21. R.T. alleges that the rape occurred as a direct result of negligence and other
18 failures of the District.

19 22. R.T. further alleges that as a direct and proximate result of the District’s acts and
20 omissions, R.T. has suffered severe psychological harm and emotional injury, including but not
21 limited to mental distress and anguish, as well as general and special damages to be proven at
22 trial.

23 23. R.T. asserts a cause of action for negligence against the District.

24. R.T. prays for general and special damages, attorneys' fees and costs, interest, and such other and further relief as the Court deems just and proper.

2. *The St. Paul Policies Issued to The District*

25. St. Paul issued a series of one-year package policies to the District, Policy number CK08403045 for 10/1/2000-10/1/2001, Policy number CK08403211 for 10/1/2001-10/1/2002 and Policy number CK08403396 for 10/1/2002-10/1/2003 (hereinafter collectively the "St. Paul Policies").

26. The coverage afforded under the October 1, 2000 - October 1, 2001, October 1, 2000 - October 1, 2002, and October 1, 2002 - October 1, 2003 policies issued by St. Paul are substantially the same. Unless referred to individually, the following terms and conditions are taken from the October 1, 2000 - October 1, 2001 policy.

a. Commercial General Liability Protection

27. The St. Paul Policies provide commercial general liability ("CGL") pursuant to their terms and conditions and not otherwise.

28. Each CGL coverage part has a general total limit of \$2,000,000.

29. Each CGL coverage part has a personal injury each person limit of \$1,000,000.

30. Each CGL coverage part has an each event limit of \$1,000,000.

31. The CGL coverage part of the St. Paul Policies contains the following insuring agreement pertaining to coverage for "bodily injury":

What This Agreement Covers

Bodily injury and property damage liability. We'll pay amounts any protected person is legally required to pay as damages for covered bodily injury, property damage or premises damage that:

- happens while this agreement is in effect; and
- is caused by an event.

1 ***Protected person*** means any person or organization who qualifies
2 as a protected person under the Who Is Protected Under This
Agreement section.

3 ***Bodily injury*** means any physical harm, including sickness or
4 disease, to the physical health of other persons. It includes any of
the following that results at any time from such physical harm,
5 sickness or disease:

6 We'll consider any of the following that happens at any time to be
part of such physical harm, sickness, or disease, if it results in or
7 from such physical harm, sickness, or disease:²

- Mental anguish, injury or illness.
- Emotional distress.
- Care, loss of services, or death.

9 We'll consider any bodily injury that's a continuation, change, or
10 resumption of previously known bodily injury to happen before
this agreement begins if such continuation, change, or resumption
11 would otherwise be covered by this agreement because of a
continuous, multiple, or other coverage trigger required under the
12 law that applies.³

13 Of course, if there's a continuation, change, or resumption, after
this agreement ends, of bodily injury that:

- isn't previously known bodily injury; and
- happens while this agreement is in effect;

14 We'll consider such continuation, change, or resumption to also
15 happen while this agreement is in effect if that would be the result
because of a continuous, multiple, or other coverage trigger
16 required under the law that applies.⁴

17 ***Previously known bodily injury*** means bodily injury that happened
18 before this agreement begins and was known by you or any
described individual protected person before this agreement
19 begins as a result of any of the following at that time:

- You or any described individual protected person reporting
20 all or part of that bodily injury to us or any other insurer.

21 ² This paragraph exists only in Form 47500 Rev. 1-01, p. 2, present in the CGL Coverage Parts of the
22 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

23 ³ This paragraph exists only in Form 47500 Rev. 1-01, p. 2, present in the CGL Coverage Parts of the
10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

⁴ This paragraph exists only in Form 47500 Rev. 1-01, p. 2, present in the CGL Coverage Parts of the
10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

- You or any described individual protected person receiving a claim or suit for all or part of that bodily injury.
- Any described individual protected person witnessing, or being told of, the beginning, or any change, continuation, or resumption, of all or part of that bodily injury.⁵

Described individual protected person means any of the following:

- ...
- Any of your directors or executive officers if you are a corporation or other organization.
- Any of your employees who is or acts as your insurance or risk manager or holds a position in your insurance, risk management, or legal department.⁶

...

Event means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Form 47500 Rev. 1-96, pp. 1-2

32. The CGL coverage part of the St. Paul Policies contains the following insuring agreement pertaining to coverage for “personal injury”:

Personal injury liability. We'll pay amounts any protected person is legally required to pay as damages for covered personal injury that:

- results from your business activities, other than advertising, broadcasting, publishing, or telecasting done by or for you; and
- is caused by a personal injury offense committed while this agreement is in effect.

Personal Injury means injury, other than bodily injury or advertising injury, that's caused by a personal injury offense.

Personal injury offense means any of the following offenses:

- False arrest, detention, or imprisonment.

⁵ This paragraph exists only in Form 47500 Rev. 1-01, p. 2, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

⁶ This paragraph exists only in Form 47500 Rev. 1-01, p. 2, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

- Malicious prosecution.
- Wrongful entry into, or wrongful eviction from, a room, dwelling, or premises that a person occupies (,if committed by or for the landlord, lessor, or owner of that room, dwelling, or premises⁷).
- Invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies (,if committed by or for the landlord, lessor, or owner of that room, dwelling, or premises⁸).
- Libel or slander (,in or with covered material⁹).
- Making known to any person or organization written or spoken material that disparages the products, work, or completed work of others.¹⁰
- Making known to any person or organization written or spoken material that violates a person's right of privacy.

Form 47500 Rev. 1-96, p. 2.

33. The CGL coverage part of the St. Paul Policies contains the following language pertaining to St. Paul's defense obligation:

Right and duty to defend a protected person.

We'll have the right and duty to defend any protected person against a claim or suit for injury or damage covered by this agreement. We'll have such right and duty even if all of the allegations of the claim or suit are groundless, false, or fraudulent. But we won't have a duty to perform any other act or service.

We'll have the right to investigate any event, offense, claim, or suit to the extent that we believe is proper. We'll also have the right to settle any claim or suit within:

- any applicable deductible; or
- the available limits of coverage.

⁷ Language in parenthetical exists only in Form 47500 Rev. 1-01, p. 3, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

⁸ Language in parenthetical exists only in Form 47500 Rev. 1-01, p. 3, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

⁹ Language in parenthetical exists only in Form 47500 Rev. 1-01, p. 3, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies.

¹⁰ The sub-definition of *personal injury offense* in Form 47500 Rev. 1-01, p. 3, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies, is as follows: "Making known to any person or organization covered material that disparages the products, work, or completed work of others."

Our duty to defend protected persons ends when we have used up the limits of coverage that apply with the payment of:

- judgments;
- settlements;
- medical expenses; or
- indemnitee defense expenses assumed under contract.

We explain what we mean by indemnitee defense expenses assumed under contract, and when we'll pay such expenses, in the Contract liability exclusion.

Claim means a demand which seeks damages.

Suit means a civil proceeding which seeks damages. It includes:

- an arbitration proceeding for such damages to which the protected person must submit, or submits with our consent; and
- any other alternative dispute resolution proceeding for such damages to which the protected person submits with our consent.

Injury or damage means:

- bodily injury, personal injury, or advertising injury; or
- property damage.
-

Offense means any:

- personal injury offense; or
- advertising injury offense.

Form 47500 Rev. 1-96, pp. 3-4.

34. The CGL coverage part of the St. Paul Policies contains the following pertaining to when coverage is afforded under the Policies:

When This Agreement Covers

Bodily injury and property damage liability.

We'll apply this agreement to claims or suits for covered bodily injury or property damage whenever they're made or brought.

Personal injury liability. We'll apply this agreement to claims or suits for covered personal injury whenever they're made or brought.

...

Form 47500 Rev. 1-96, p. 4.

35. The CGL coverage part of the St. Paul Policies contains the following language pertaining to whom coverage is afforded under the Policies:

Who Is Protected Under This Agreement

Corporation or other organization. If you are shown in the Introduction as a named insured and a corporation or another organization, you are a protected person. Your directors and executive officers are protected persons only for the conduct of their duties as your directors or executive officers. And your stockholders are protected persons only for their liability as your stockholders.

...

Employees and volunteer workers. Your employees are protected persons only for:

- work done within the scope of their employment by you;
- or
- their performance of duties related to the conduct of your business.

And your volunteer workers are protected persons only for activities or work they conduct or perform:

- at your direction; and
- within the scope of their duties for you.

...

Employee includes a leased worker, other than a leased temporary worker.

Leased worker means any person who:

- is hired from an employee leasing firm under a contract or agreement between the hirer and that firm; and
- is performing duties related to the conduct of the hirer's business.

Volunteer worker means any person other than:

- an employee; or
- a leased temporary worker.

...

Student Teachers. Any student teacher teaching for you as part of their educational requirements is a protected person. But only for covered injury or damage that results from their duties for you.

Form 47500 Rev. 1-96, pp. 5-6, as amended by Form 47180 Rev. 1-96.

36. The CGL coverage part of the St. Paul Policies contains the following language pertaining to the limits of coverage afforded under the Policies:

Limits of Coverage

The limits shown in the Coverage Summary and the information contained in this section fix the most we'll pay as damages and medical expenses, regardless of the number of:

- protected persons;
- claims made or suits brought; or
- persons or organizations making claims or bringing suits.

General total limit. This is the most we'll pay for the combined total of:

- all covered bodily injury and property damage that happens in a policy year;
- all covered personal injury that's caused by all advertising injury offenses committed in a policy year;
- all covered medical expenses that result from all events which happen in a policy year.

We'll apply the general total limit separately to:

- the combined total of all covered bodily injury, property damage, and medical expenses that result from each of your premises;
- the combined total of all covered bodily injury, property damage, and medical expenses that result from the remainder of your business, other than your products or completed work, which isn't conducted at, on, or in, or in connection with, any of your premises; and
- the combined total of all covered personal injury and advertising injury that's caused by all personal injury offenses and advertising injury offenses committed in a policy year, regardless of the number of your premises.

...

Policy Year means the policy period shown in the introduction, or the period of time that this agreement is in effect, whichever is less. But when that period is longer than one year, it means each

consecutive annual period, and the remaining period, if any, that this agreement is in effect, starting with the beginning date of this agreement.¹¹

...

Person injury each person limit. This is the most we'll pay for all covered personal injury that:

- is sustained by any one person or organization; and
- is caused by all personal injury offenses committed in a policy year.

...

Each event limit. This is the most we'll pay for all covered bodily injury, property damage, and medical expenses that result from any one event.

...

Form 47500 Rev. 1-96, pp. 8-9, as amended by Form 43986 Rev. 3-97.

37. The CGL coverage part of the St. Paul Policies contains the following exclusions limiting the coverage afforded under the Policies:

Exclusions - What This Agreement Won't Cover

...

Deliberately breaking the law. We won't cover injury or damage that results from:

- the protected person knowingly breaking any criminal law; or
- any person or organization breaking any criminal law with the consent or knowledge of the protected person.

¹¹ The definition of *policy year* in Form 47500 Rev. 1-01, p. 3, present in the CGL Coverage Parts of the 10/01/2001-10/01/2002 and 10/01/2002 – 10/01/2003 Policies, is as follows: "*Policy year* means the policy period shown in the Introduction, or the period of time that this agreement is in effect, whichever period is shorter. But when that period is longer than one year, policy year means each of the following periods of time that this agreement is in effect, starting with the beginning date of this agreement:

- Each consecutive one-year period.
- Any period that remains after the last consecutive one-year period."

However, if the original policy period shown in the introduction is extended for a period of less than one year, we'll consider each such extended period to be part of the last policy year, regardless of the number of extensions provided."

Form 47500 Rev. 1-96, p. 14.

Expected or intended bodily injury or property damage. We won't cover bodily injury or property damage that's expected or intended by the protected person. Nor will we cover medical expenses that result from such bodily injury.

...

Form 47500 Rev. 1-96, p. 14.

38. CGL coverage part of the St. Paul Policies contains the following language regarding other insurance.

Other Insurance

This agreement is primary insurance. If there is any other valid and collectible insurance for injury or damage covered by this agreement, the following applies in connection with that insurance.

Other Primary Insurance. When there is other primary insurance, we'll share with that insurance the amounts you're legally required to pay as damages for injury or damage covered by this agreement. We'll do so with one of the methods of sharing described in the Methods of Sharing Section.

However, we'll apply this agreement as excess insurance over the part or parts of any other insurance which provide:

...

- Protection for you as an additional insured or additional protected person if you agree that we may apply this agreement as excess insurance.

...

Excess Insurance. When this agreement is excess insurance, we won't have a duty to defend the protected person against the part or parts of any claim or suit for which any other insurer has the duty to defend the protected person.

However, we'll defend the protected person against a claim or suit for injury or damage covered by this agreement if no other insurer will do so. In return we'll require that we be given all of the protected person's rights against each insurer.

1 ...

2 Form 47500 Rev. 1-96, pp. 21-22.

3 39. CGL coverage part of the October 1, 2001 – October 1, 2002 and October 1, 2002
4 – October 1, 2003 St. Paul Policies contain the following language regarding other insurance.

5 **Other Insurance**

6 This agreement is primary insurance. If there is any other valid
7 and collectible insurance for injury or damage covered by this
8 agreement, the following applies in connection with that
9 insurance.

10 *Other insurance* means insurance, or the funding of losses, that's
11 provided by or through:

- 12 • another insurance company;
- 13 • us, except under this agreement;
- 14 • any of our affiliated insurance companies;
- 15 • any risk retention group;
- 16 • any self-insurance method or program, other than any
17 funded by you and over which this agreement applies; or
- 18 • any similar risk transfer or risk management method.

19 However, we won't consider umbrella insurance, or excess
20 insurance, that you bought specifically to apply in excess of the
21 limits of coverage that apply under this agreement to be other
22 insurance.

23 **Primary or excess other insurance.** When there is primary other
insurance, we'll share with that other insurance any damages for
injury or damage covered by this agreement. We'll do so with one
of the methods of sharing described in the Methods of sharing
section.

However, we'll apply this agreement as excess insurance over the
part or parts of any primary or excess other insurance that provide:

...

- Protection for you as an additional insured r additional
protected person.

...

When this agreement is excess insurance. When this agreement
is excess insurance, we won't have a duty to defend the protected

1 person against the part or parts of any claim or suit for which any
2 other insurer has the duty to defend that protected person.

3 However, we'll defend the protected person against a claim or suit
4 for injury or damage covered by this agreement if no other insurer
will do so. In return we'll require that we be given all of that
protected person's rights against each such insurer.

...

5 Form 47500 Rev. 1-01, p. 26.

6 40. The October 1, 2001 – October 1, 2002 and October 1, 2002 – October 1, 2003

7 St. Paul Policies contain the following endorsement regarding other insurance.

8 If you've specifically agreed in a written contract that this
9 agreement must be primary to and non-contributory with other
10 insurance issued directly to a described additional protected
person, we won't share with that other insurance any damages
incurred by that described additional protected person for:

- 11 • bodily injury or property damage covered by this
12 agreement that happens after that written contract was
made; or
- 13 • personal injury or advertising injury covered by this
14 agreement that's caused by an offense committed after that
written contract was made.

15 *Described additional protected person* means any person or
organization, other than you, who:

- 16 • qualifies as a protected person under this agreement; and
- 17 • is named or described below.

18 **Name or description:**

19 All persons or organizations as required by written contract and to
whom Certificates of Insurance have been issued and on file with
the Company.

20 Form G0435 Ed. 4-00, p. 1.

21 41. The October 1, 2001 – October 1, 2002 and October 1, 2002 – October 1, 2003

22 St. Paul Policies contain the following endorsement:

23 **Sexual abuse.** We won't cover bodily injury, personal injury, or
medical expenses that result from any sexual abuse committed by
any person who otherwise qualifies as a protected person.

Form 43928 Rev. 1-01.

42. The St. Paul Policies contain the following endorsement regarding what to do in the event of a loss:

WHAT TO DO IF YOU HAVE A LOSS

You or other protected persons are required to perform the duties described below when a property loss that may be covered under this policy happens or an accident or incident happens that could result in liability damages covered under this policy. Failure to comply could affect coverage. The insuring agreements contained in this policy determine what is covered. As a result, you should read them carefully to understand the extent of the coverage provided.

...

When This Policy Provides Liability Protection

If an accident or incident happens that may involve liability protection provided in this policy, you or any other protected person involved must:

1. Notify the police if a law may have been broken.
2. Tell us or our agent what happened as soon as possible. Do this even though no demand for damages has been made against you or any other protected person, but you or another protected person is aware of having done something that may later result in a demand for damages. This notice should include all of the following:
 - The time and place of the accident or incident;
 - The protected person involved;
 - The specific nature of the accident or incident including the type of demand for damages that may result; and
 - The names and addresses of any witnesses and injured people.
 - ...
 - Send us a copy of all written demands. Also send us a copy of all legal documents if someone starts a lawsuit.
 - Cooperate and assist us in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses.

- Not assume any financial obligation or pay out any money without our consent. But this rule doesn't apply to first aid given to others at the time of an accident.

Form 40814 Ed. 11-91.

3. *The St. Paul Policies Issued to SIAW as a Pool*

43. From September 1, 2004 through September 1, 2008, St. Paul the following one-year package policies to SIAW (the "St. Paul Pool Policies"):

- GP06301650, effective 09/01/2004 – 09/01/2005;
- GP06301762, effective 09/01/2005 – 09/01/2006;
- GP06301882, effective 09/01/2006 – 09/01/2007; and
- GP06301988, effective 09/01/2007 – 09/01/2008.

44. The District is listed as a Pool participant under the St. Paul Pool Policies.

45. Unless referenced individually, the coverage afforded under the St. Paul Pool Policies is same or substantially similar.

46. The St. Paul Pool Policies contain the following coverage part:

a. *The "Public Entity Liability Protection Pooling Groups — Excess of Self-Insured Retention" Coverage Part*

47. The St. Paul Pool Policies contains the following coverage form:

"Public Entity Liability Protection Pooling Groups — Excess of Self-Insured Retention" (hereinafter referred to as the "PELP coverage part").

Form OL023 Ed. 8-98.

48. The PELP coverage parts of the St. Paul Pool Policies have a \$100,000 Self-Insured Retention for "each accident, event, offense, or wrongful act."

49. The PELP coverage parts of the St. Paul Pool Policies have a \$20,000,000 limit for each accident, event, offense, or wrongful act.

1 50. The PELP coverage parts of the St. Paul Pool Policies have a \$30,000,000 general
2 total limit.

3 51. The 09/09/01/2004 – 09/01/2005 and 09/01/2005 – 09/01/2006 PELP coverage
4 parts of the St. Paul Pool Policies have a \$10,000,000 pool sexual abuse maximum limit.

5 52. The 09/01/2006 – 09/01/2007 and 09/01/2007 – 09/01/2008 PELP coverage parts
6 of the St. Paul Pool Policies have a \$20,000,000 pool sexual abuse maximum limit.

7 53. The PELP coverage parts of the St. Paul Pool Policies have a \$5,000,000 sexual
8 abuse total limit.

9 54. The PELP coverage parts of the St. Paul Pool Policies have a \$5,000,000 sexual
10 abuse each person limit.

11 55. The PELP coverage parts of the St. Paul Pool Policies have a \$5,000,000 sexual
12 abuse total limit.

13 56. The PELP coverage part of the St. Paul Pool Policies contains the following
14 insuring agreement:

15 **What This Agreement Covers**

16 **Bodily injury and property damage liability.**

17 We'll pay amounts any protected person is legally required to pay as
18 damages for covered bodily injury or property damage that:

- 19 • happens while this agreement is in effect; and
 • is caused by an event.

20 Policy Form OL023 Ed. 8-98, p. 2.

21 57. The PELP coverage part of the St. Paul Pool Policies contains the following
22 definitions that are applicable to the foregoing Insuring Agreement.
23

1 *Protected person* means any person or organization who qualifies as a
 2 protected person under the Who is Protected Under This Agreement
 section.

3 *Bodily Injury* means:

- 4 • physical harm, sickness, or disease;
- 5 • Mental anguish, injury, or illness.
- 6 • Emotional distress.
- 7 • Care, loss of services, or death.
- 8 • Humiliation.

9 . . .

10 *Event* means an accident, including continuous or repeated
 exposure to substantially the same general harmful conditions.

Policy Form OL023 Ed. 8-98, p. 2.

11 58. In addition to the foregoing, the PELP coverage part of the St. Paul Pool Policies
 12 contains the following Insuring Agreement for Personal Injury Liability:

13 **Personal injury liability.** We'll pay amounts any protected person
 14 is legally required to pay as damages for covered personal injury
 that:

- 15 • results from your operations, other than advertising,
 broadcasting, publishing, or telecasting done by or for you;
 and
- 16 • is caused by a personal injury offense committed while this
 agreement is in effect.

17 Policy Form OL023 Ed. 8-98, p. 2.

18 59. The PELP coverage part of the St. Paul Pool Policies contains the following
 19 definitions that are applicable to the PELP coverage part Insuring Agreement:

20 *Personal injury* means injury, other than bodily injury or
 21 advertising injury, that's caused by a personal injury offense.

22 *Personal injury offense* means any of the following offenses:

- 23 • False arrest, detention, or imprisonment.
- Malicious prosecution.

- Wrongful entry into, or wrongful eviction from, a room, dwelling, or premises that a person occupies.
- Invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies.
- Libel or slander.
- Making known to any person or organization written or spoken material that disparages the products, work, or completed work of others.
- Making known to any person or organization written or spoken material that violates a person's right of privacy.
- Improper service of process.
- Violation of civil rights under any federal, state, or local law.

Policy Form OL023 Ed. 8-98, pp. 2-3.

60. The PELP coverage part of the St. Paul Pool Policies contains the following exclusions:

Exclusions - What This Agreement Won't Cover

Insuring Agreement Exclusions

The following exclusions apply to all coverages provided by this insuring agreement.

...

Deliberately breaking the law. We won't cover injury or damage that results from:

- the protected person knowingly breaking any criminal law; or
- any person or organization breaking any criminal law with the consent or knowledge of the protected person.

Policy Form OL023 Ed. 8-98, p. 12.

Expected or intended bodily injury or property damage. We won't cover bodily injury or property damage that's expected or intended by the protected person.

Policy Form OL023 Ed. 8-98, p. 16.

Dishonest acts. We won't cover claims that result from dishonest, intentionally fraudulent, criminal, or malicious acts or omissions

of any protected person or of anyone for whose acts the protected person is legally responsible.

But this exclusion doesn't apply to any protected person who didn't:

- personally participate in committing any such act or omission; or
- remain passive after having personal knowledge of any such act or omission.

Policy Form OL023 Ed. 8-98, p. 23.

61. The PELP coverage part of the St. Paul Pool Policies contains the following Endorsements:

PUBLIC ENTITY LIABILITY PROTECTION POOLING
GROUPS LIMITED PUNITIVE DAMAGES EXCLUSION
ENDORSEMENT

This endorsement changes your Public Entity
Liability Protection Pooling Groups - Excess Of Self-Insured Retention.

How Coverage Is Changed
The following is added to the Exclusions - What This Agreement
Won't Cover section. This change excludes coverage.

Punitive damages. We won't pay punitive damages awarded as a
part of a judgment or settlement.

Policy Form OL103 Ed. 10-02.

62. The PELP coverage part of the St. Paul Pool Policies contains the following policy provisions:

Right to investigate or defend. We'll have the right to defend any protected person against a claim or suit for injury, damage, or loss covered by this agreement. We'll also have the right to investigate any claim or suit to the extent that we believe is proper. We may exercise such rights even if:

- all of the allegations of the claim or suit are groundless, false, or fraudulent; or

- the total amount of the damages and claim expenses for such injury, damage, or loss probably won't exceed a self-insured retention that applies.

...

However, we have no duty to defend any claim or suit or perform other acts or services. In addition, our right to defend protected persons against claims or suits **ends** when the limits of coverage that apply have been used up with the payment of:

- judgments;
- settlements; or
- indemnitee defense expenses assumed under contract.

Policy Form OL023 Ed. 8-98, p. 22.

Self-Insured Retentions

The self-insured retentions shown in the Coverage Summary and the information contained in this section fix the amount of damages and claim expenses which you'll be required to pay, and over which the limits of coverage will apply in accordance with the Limits Of Coverage section, regardless of the number of:

- protected persons;
- claims made or suits brought; or
- persons or organizations making claims or bringing suits.

Each accident, event, offense, or wrongful act retention. This is the amount that you will be required to pay for the combined total of:

...

- all covered bodily injury and property damage that results from any one event;
- all covered personal injury or advertising injury that's caused by all personal injury or advertising injury offenses committed in a policy year;

...

Payments over a self-insured retention. We must be consulted prior to any payments being made or agreed to that erode the limits of coverage. If you settle or make payments on a claim where damages or claim expenses exceed the self-insured retention without first notifying or consulting with us, we will consider those voluntary payments to be your responsibility.

Policy Form OL023 Ed. 8-98, p. 11.

Who Is Protected Under This Agreement

Public entity or other organization. If you are shown in the Introduction as a named insured and a public entity or other organization, you are a protected person...

Elected or appointed officials and members. Any of your elected or appointed officials, directors, or executive officers, or members of any of your agencies, boards, or commissions, are protected persons only for the conduct of their duties as your elected or appointed officials, directors, executive officers, or members.

Employees and volunteer workers. Your employees are protected persons only for:

- work done within the scope of their employment by you;
- their performance of duties related to your operations; or

Student Teachers. Any student teacher teaching for you as part of their educational requirements is a protected person, but only for covered injury or damage that results from activities or work they conduct or perform:

- at your direction; and
- within the scope of their duties for you.

...

Policy Form OL023 Ed. 8-98, p. 7, as amended by Form OL104 Ed. 10-02.

63. The 09/01/2004 – 09/01/2005 PELP coverage part of the St. Paul Pool Policies contains the following endorsement regarding “other insurance:”

This endorsement changes your Public Entity Liability Protection Pooling Groups – Excess of Self-Insured Retention.

...

Other Insurance

If there is any other valid and collectible insurance for injury or damage covered by this agreement, we will apply this agreement as excess insurance over such other insurance.

Policy Form OL089 Rev. 2-03.

64. The 09/01/2005 – 09/01/2008 PELP coverage parts of the St. Paul Pool Policies contain the following endorsement regarding “other insurance:”

This endorsement changes your Public Entity Liability Protection Pooling Groups – Excess of Self-Insured Retention.

...

Other Insurance

If there is any valid and collectible other insurance for injury or damage covered by this agreement, we’ll apply this agreement as excess insurance over such other insurance.

Policy Form OL089 Rev. 1-04.

b. The "Administration Liability Protection — Claims-Made" Coverage Part

65. The St. Paul Pool Policies also contain the following coverage part:

"Washington Schools Educational Institution Administration Liability Protection — Claims-Made " (hereinafter referred to as the “ALP coverage part”).

PM006 Ed. 5-95.

66. Each ALP coverage part of the St. Paul Pool Policies has a Self-Insured Retention of \$100,000 for "each wrongful act."

67. Each ALP coverage part of the St. Paul Pool Policies has a wrongful act limit of \$20,000,000.

68. Each ALP coverage part of the St. Paul Pool Policies also has a \$20,000,000 total limit.

69. The ALP coverage part of the St. Paul Pool Policies contains the following insuring agreement:

Educational institution administration liability. We'll pay amounts any protected person is legally required to pay as damages for covered loss that:

- results from the conduct of duties by or for an educational institution; and
- is caused by a wrongful act committed on or after the retroactive date and before this agreement ends.

PM006 Ed. 5-95, p. 2.

70. The ALP coverage part of the St. Paul Pool Policies contains the following definitions that are applicable to the ALP Insuring Agreement.

Protected person means any person or organization who qualifies as a protected person under the Who Is Protected Under This Agreement section.

Wrongful act means any negligent act, error or omission. It includes any:

- misstatement or misleading statement; or
- neglect or breach of duty.

...

Claim means a demand that seeks damages.

Suit means a civil proceeding that seeks damages. It includes:

- an arbitration proceeding for damages to which the protected person must submit or submits with our consent; and
- any other alternative dispute resolution proceeding for damages to which the protected person submits with our consent.

Suit does not include an administrative hearing or proceeding.

PM006 Ed. 5-95, p. 2, as amended by OL030 Ed. 8-98.

71. In addition to the foregoing, the ALP coverage part of the St. Paul Pool Policies specifically contains the following Notice in the header of the coverage form:

Important note: This is a claims-made insuring agreement with claim expenses within the limits of coverage and the self-insured retention. The limits of coverage apply over the self-insured retention.

Claims or suits must be reported during the policy period, or a reporting period if applicable, to be covered. Please read this agreement carefully, especially the What This Agreement Covers, When This Agreement Covers and Limits Of Coverage sections.

PM006 Ed. 5-95, p.1.

72. The ALP coverage part of the St. Paul Pool Policies contains the following provisions relating to this coverage part:

When This Agreement Covers

During the policy period or limited reporting period. We'll apply this agreement to claims or suits for covered loss only when they're first made or brought:

- while this agreement is in effect; or
- during the limited reporting period if it applies.

Limited reporting period means the 60 days, starting with the end of this agreement, during which claims or suits for covered loss caused by a wrongful act committed before this agreement ends may be first made or brought.

When we consider a claim or suit to be first made or brought. We'll consider a claim or suit for covered loss to be first made or brought on the earliest of the following dates:

- The date that we, your claim handling service or any protected person receives a written claim or a notice of suit.
- The date that we or your claim handling service receive a notice of a wrongful act from any protected person. However, we or your claim handling service won't accept such a notice unless it also describes what loss may result from the wrongful act.

We'll also consider all claims or suits from covered loss caused by a wrongful act, or a series of related wrongful acts, to have been made or brought on the date that the first of those claims or suits was first made or brought.

Series of related wrongful acts means two or more wrongful acts, including repeated or continuous wrongful acts, that are related to the same loss.

PM006 Ed. 5-95, pp. 4-5.

73. The ALP coverage part of the St. Paul Pool Policies contains the following provisions relating to who is protected under the ALP coverage part:

Who is Protected Under This Agreement

Educational institution. If you are an educational institution named in the Introduction, you are a protected person. But only for the conduct of duties for you.

Trustees, board members or commissioners. Your trustees, board members or commissioners are protected persons. But only for the conduct of their duties for you.

Employees. Your employees are protected persons. But only for the conduct of their duties for you.

Your employees include teachers, student teachers and teacher aids.

...

PM006 Ed. 5-95, p. 5.

c. St. Paul Pool Policy Language Applicable To Both the PELP and ALP Coverage Parts

74. The St. Paul Pool Policies contain the following policy language applicable to all coverage parts:

WHAT TO DO IF YOU HAVE A LOSS

This form applies if:

...

- your policy provides any liability protection and there's an accident, act, error, event, incident, offense, or omission that may result in damages or other amounts which may be covered under that protection.

Coverage under your policy may be affected by any failure to fulfill any of the duties described in this form.

However, neither this form, nor any of these duties, change or eliminate any coverage condition or requirement, or

1 exclusion or other coverage limitation, anywhere in the rest
2 of your policy, such as:

- 3 • a specific coverage trigger, reporting, notice, or
knowledge condition or requirement; or
- 4 • an exclusion or other coverage limitation that's
based, all or in part, on knowledge.

5 This form and the rest of your policy should be read
6 carefully to determine:

- 7 • the extent of the coverage provided by your policy;
and
- 8 • the rights and duties of you and any other person or
organization protected under your policy.

9 **If Your Policy Provides Liability Protection**

10 If your policy provides liability protection and there's an
11 accident, act, error, event, incident, offense, or omission that
12 may result in damages or other amounts which may be
13 covered under that protection, you or any other person or
organization protected under your policy must do all of the
following in connection with that accident, act, error, event,
incident, offense, or omission:

- 14 1. As soon as possible after having knowledge of the
accident, act, error, event, incident, offense, or
15 omission, tell us or one of our authorized
representatives what happened. Do this even if no
16 demand against you or any other person or
organization protected under your policy has been
17 made.

18 Include all of the following information that's reasonably
available:

- 19 • The time, place, and specific nature of the accident,
act, error, event, incident, offense, or omission.
- 20 • The type of demand that has been or may be made
against you or any other person or organization
21 protected under your policy.
- 22 • The name and address of each person or
organization that may make a claim or bring a suit.
- 23 • The name and address of each person who may be a
witness.

- The name and address of each person or organization that may be involved and is protected under your policy.

Our United States of America (USA) Claim Call Center is available from anywhere in the USA at any time at the following toll-free telephone number to tell us this information:

1-800-787-2851

Also, our Internet web site is available from anywhere at any time at the following address to tell us this information:

www.travelers.com

However, neither we nor any of our authorized representatives need to be told of an accident, act, error, event, incident, offense, or omission that first involves your workers compensation insurance unless the liability protection provided by your policy is likely to be involved.

...

3. As soon as possible after receiving them, mail, deliver, or otherwise give to us a copy of:

- all written demands made; and
- all legal documents relating to any suit brought;

against you or any other person or organization protected under your policy.

4. Cooperate with and, when requested, assist us in:

- securing and giving evidence;
- attending hearings and trials;
- obtaining the attendance of witnesses; and
- taking other reasonable steps to help us investigate or settle, or defend a person or organization protected under your policy against, a claim or suit.

5. Not assume any financial obligation or pay out any money, other than for first aid given to others at the time of an accident, without our consent.

When we consider you to have knowledge of an accident, act, error, event, incident, offense, or omission

If you're an organization, we'll consider you to have knowledge of an accident, act, error, event, incident, offense, or omission only if any person has knowledge of it while he or she is your:

- appointed or elected official if you're a public entity or tribal government;
- employee, or authorized person, with a duty given by you to tell us, one of our authorized representatives, or any of the persons described above, about that accident, act, error, event, incident, offense, or omission.

We'll also consider you to have knowledge of an accident, act, error, event, incident, offense, or omission if any person has knowledge of it while he or she is that organization's:

...

- appointed or elected official if it's a public entity or tribal government; or

...

When we consider other persons or organizations to have knowledge of an accident, act, error, event, incident, offense, or omission. We'll consider any person or organization protected under your policy, other than you, to have knowledge of an accident, act, error, event, incident, offense, or omission if you or any of the persons described in the When we consider you to have knowledge of an accident, act, error, event, incident, offense.

Policy Form 40814 Rev. 8-03.

75. The St. Paul Pool Policies contain the following policy endorsement:

Public Entity Liability Protection Pooling Groups
Sexual Abuse Insured Elsewhere Exclusion Endorsement -
Highline School District

This endorsement changes your Public Entity Liability Protection Pooling Groups - Excess of Self-Insured Retention

How Coverage Is Changed

The following is added to the Exclusions - What This Agreement Won't Cover section. This change excludes coverage.

Sexual abuse insured elsewhere exclusion. We won't cover bodily injury and personal injury that result from any sexual abuse:

- * committed by any person who otherwise qualifies as a protected person; and

* which is considered a covered loss under policy GG06300165.

However, this exclusion applies only to Highline School District. Sexual abuse means any illegal or offensive physical act or contact of asexual nature.

40502 Ed.1-80.

76. The 9/1/2004 – 9/1/2007 St. Paul Pool Policies contain the following policy endorsement:

Public Entity Liability Protection Pooling Groups
Sexual Abuse Sublimit Endorsement - With General Total
Sublimit And Total Maximum Total Limit

This endorsement changes your Public Entity Liability Protection Pooling Groups - Excess of Self-Insured Retention

How Coverage Is Changed

There are five changes which are explained below.

1. The following is added to the Each accident, event, offense, or wrongful act limit section. This change limits coverage.

The Each accident, event, offense, or wrongful act limit doesn't apply to covered bodily injury or personal injury that results from sexual abuse committed by any person who otherwise qualifies as a protected person. Instead, the sexual abuse each person limit applies. We explain that limit in the Sexual abuse each person limit section.

2. The following is added to the Limits Of Coverage section. This change limits coverage.

Sexual abuse each person limit. This is shown in the Coverage Summary. It is the most we'll pay for all covered bodily injury and personal injury which result from all sexual abuse that:

- * is sustained by any one person; and
- * is committed in a policy year by all persons who otherwise qualify as protected person.

If the amount of this limit is not shown in the Coverage Summary, it will be considered to be the same as \$1,000,000.

3. The following is added to the General total limit section. This change limits coverage.

The most we'll pay for covered bodily injury and personal injury that result from sexual abuse is further limited by the following:

Sexual abuse total limit. This limit is shown in the Coverage Summary. It is the most we'll pay for the combined total of all covered bodily injury and personal injury which result from all sexual abuse that:

- * is sustained by all persons; and
- * is committed in a policy year by all persons who otherwise qualify as protected persons.

If the amount of this limit is not shown in the Coverage Summary, it will be considered to be the same as \$1,000,000.

40502 Ed.1-80.

77. The 9/1/2007 – 9/1/2008 St. Paul Pool Policy contains the following policy endorsement

**SCHOOLS INSURANCE ASSOCIATION OF
WASHINGTON SEXUAL ABUSE SUBLIMIT
ENDORSEMENT - WITH GENERAL TOTAL SUBLIMIT**

This endorsement changes your Public Entity Liability Protection
Pooling Groups - Excess of Self-Insured Retention

How Coverage Is Changed

There are five changes which are explained below.

1. The following is added to the Each accident, event, offense, or wrongful act limit section. This change limits coverage.

The Each accident, event, offense, or wrongful act limit doesn't apply to covered bodily injury or personal injury

that results from sexual abuse committed by any person who otherwise qualifies as a protected person. Instead, the sexual abuse each person limit applies. We explain that limit in the Sexual abuse each person limit section.

2. The following is added to the Limits Of Coverage section. This change limits coverage.

Sexual abuse each person limit. This limit is shown in the Coverage Summary. It is the most we'll pay for all covered bodily injury and personal injury which result from all sexual abuse that:

- is sustained by any one person; and
- is committed in a policy year by all persons who otherwise qualify as protected person.

We'll consider all sexual abuse that:

- is sustained by any one person; and
- is committed while this agreement is in effect by all persons who otherwise qualify as protected persons;

to have been committed before this agreement begins if such person has also sustained sexual abuse that was committed before this agreement begins by any person who otherwise qualifies as a protected person.

If the amount of this limit is not shown in the Coverage Summary, it will be considered to be the same as \$1,000,000.

3. The following is added to the General total limit section. This change limits coverage.

The most we'll pay for covered bodily injury and personal injury that result from sexual abuse is further limited by the following:

Sexual abuse total limit. This limit is shown in the Coverage Summary. It is the most we'll pay for the combined total of all covered bodily injury and personal injury which result from all sexual abuse that:

- is sustained by all persons; and
- is committed in a policy year by all persons who otherwise qualify as protected persons.

•

We'll consider all sexual abuse that:

- is sustained by any one person; and
- is committed while this agreement is in effect by all persons who otherwise qualify as protected persons;

to have been committed before this agreement begins if such person has also sustained sexual abuse that was committed before this agreement begins by any person who otherwise qualifies as a protected person.

If the amount of this limit is not shown in the Coverage Summary, it will be considered to be the same as \$1,000,000.

Sexual abuse means any illegal or offensive physical act or contact of a sexual nature.

We explain what we mean by protected person in the What This Agreement

4. The following is added to the Limits Of Coverage section. This change limits coverage.

Pool maximum sexual abuse limit. This limit is shown in the Coverage Summary. It is the most we'll pay for all members in a policy term for the combined total of all covered bodily injury and personal injury which result from all sexual abuse that:

- is sustained by all persons;
- is committed in a policy year by all persons who otherwise qualify as protected persons.

We'll consider all sexual abuse that:

- is sustained by any one person; and
- is committed while this agreement is in effect by all persons who otherwise qualify as protected persons;

to have been committed before this agreement begins if such person has also sustained sexual abuse that was committed before this agreement begins by any person who otherwise qualifies as a protected person.

The pool maximum sexual abuse limit applies regardless of the number of members shown in the Named Insured Continued Endorsement.

If the amount of this limit is not shown in the Coverage Summary, it will be considered to be the same as \$10,000,000.

5. The following is added to the Exclusions - What This Agreement Won't Cover section. This change excludes coverage.

Sexual abuse covered by other insurance written by us.

We won't cover injury or damage that results from any illegal or offensive physical act or contact of a sexual nature committed against a minor or other person who is incompetent if such injury or damage is covered under a Sexual Abuse Liability Protection -Claims-Made insuring agreement written by us and issued to Highline School District #401.

...

Form PS096 Ed. 9-05.

78. The 09/01/2004 - 09/01/2007 St. Paul Pool Policies contain the following policy endorsement:

PUBLIC SECTOR SERVICES MULTIPLE SELF-INSURED RETENTIONS ENDORSEMENT

This endorsement changes your policy.

How Coverage Is Changed

The following is added.

How multiple self-insured retentions apply to the same loss. If two or more self-insured retentions in this policy apply to the same covered loss, we'll apply only the largest of those retentions to that loss.

...

Form 47661 Ed.1-95.

79. The 09/01/2007 - 09/01/2008 St. Paul Pool Policy contains the following policy endorsement:

PUBLIC SECTOR SERVICES

MULTIPLE SELF-INSURED RETENTIONS

This endorsement changes your policy.

How Coverage Is Changed

The following is added. This change limits the number of self-insured retentions you'll be responsible for paying when two or more of those retentions apply to the same injury, damage, or loss. This change broadens coverage.

How multiple self-insured retentions apply to the same injury, damage, or loss. If two or more self-insured retentions in this policy apply to the same amounts for covered injury, damage, or loss, you'll only be responsible for paying the largest of those retentions.

...

Form D0126 Ed. 6-06.

4. The SIAW Policies

80. On information and belief, SIAW issued successive one-year policies to the District from September 1, 2004 through September 1, 2008 (the "SIAW policies").

81. On information and belief, the SIAW policies provide substantially the same or similar coverage as provided by the St. Paul Policies.

5. The Atlantic Mutual Policies

82. On information and belief, Atlantic Mutual Insurance Company ("Atlantic Mutual") issued successive one-year policies to the District from 1995 through 2000 (the "Atlantic Mutual policies").

83. On information and belief, the Atlantic Mutual policies provide substantially the same or similar coverage as provided by the St. Paul Policies.

84. On information and belief, Atlantic Mutual was placed into liquidation and the New York Superintendent of Insurance was appointed as Liquidator on April 27, 2011, by order of the Supreme Court of the State of New York.

1 **IV. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO ST.**
2 **PAUL’S COVERAGE OBLIGATIONS**

3 **1. *The St. Paul CGL Policies***

4 85. There is no coverage available to the District under the St. Paul Policies for the
5 claims asserted or the damages sought in the Underlying Lawsuit.

6 86. The CGL Coverage parts of the St. Paul Policies provide coverage for amounts
7 protected persons are legally required to pay as damages for covered *bodily injury* that happens
8 while the Policies are in effect and is caused by an *event*.

9 87. There is an actual and justiciable controversy whether the District is legally
10 required to pay for the damages alleged in the Underlying Lawsuit.

11 88. There is an actual and justiciable controversy whether the allegations against the
12 District in the Underlying Lawsuit concern *bodily injury*, as that term is defined, that happened
13 while the St. Paul Policies were in effect.

14 89. The CGL Coverage parts of the October 1, 2001 – October 1, 2003 St. Paul
15 Policies provide that *bodily injury* that is a continuation, change, or resumption of previously
16 known bodily injury happening before the October 1, 2001 – October 1, 2003 St. Paul Policies
17 will be considered to have happened prior to the October 1, 2001 – October 1, 2003 St. Paul
18 Policies if such continuation, change, or resumption would otherwise be covered by this
19 agreement because of a continuous, multiple, or other coverage trigger required under the law
20 that applies.

21 90. There is an actual and justiciable controversy whether the allegations against the
22 District in the Underlying Lawsuit concern *bodily injury*, as that term is defined, that is a
23 continuation, change, or resumption of *previously known bodily injury* happening before the
 October 1, 2001 – October 1, 2003 Policies.

1 91. There is an actual and justiciable controversy whether the damages at issue in the
2 Underlying Lawsuit concern a *previously known bodily injury* as defined by the October 1, 2001
3 – October 1, 2003 St. Paul Policies.

4 92. The CGL Coverage parts of the St. Paul Policies provide coverage for amounts
5 *protected persons* are legally required to pay as damages for covered *personal injury* that results
6 from business activities and is caused by a *personal injury offense* committed while this
7 agreement is in effect.

8 93. There is an actual and justiciable controversy whether the District is required to
9 pay damages for the claims at issue in the Underlying Lawsuit.

10 94. There is an actual and justiciable controversy whether the allegations asserted
11 against the District in the Underlying Lawsuit amount to *personal injury* as defined by the
12 Policies.

13 95. There is an actual and justiciable controversy whether the allegations asserted
14 against the District in the Underlying Lawsuit concern *personal injury* caused by a *personal*
15 *injury offense* committed while this agreement is in effect.

16 96. Pursuant to the CGL Coverage parts of the St. Paul Policies, St. Paul has the right
17 and duty to defend *protected persons* against a *claim* or *suit* for *injury* or *damage* covered by this
18 agreement.

19 97. There is an actual and justiciable controversy whether the allegations asserted
20 against the District in the Underlying Lawsuit trigger St. Paul's defense obligation to the District.

21 98. The CGL Coverage parts of the St. Paul Policies exclude coverage for *injury* or
22 *damage* that results from a *protected person* knowingly breaking any criminal law or any person
23 or organization breaking any criminal law with the consent or knowledge of the *protected person*.

1 99. There is an actual and justiciable controversy whether the allegations asserted
2 against the District in the Underlying Lawsuit arise from the District or any *protected person*
3 deliberately breaking the law.

4 100. The CGL Coverage parts of the St. Paul Policies exclude coverage for *bodily*
5 *injury or property damage* that's expected or intended by the *protected person*.

6 101. There is an actual and justiciable controversy whether the allegations asserted
7 against the District in the Underlying Lawsuit arise from *bodily injury or property damage* that
8 was expected or intended by the District or any *protected person*.

9 102. In the event that the CGL Coverage parts of the St. Paul Policies are triggered by
10 the allegations asserted against the District in the Underlying Lawsuit, the coverage afforded by
11 the St. Paul Polies may be primary, co-primary, or excess to other available insurance.

12 103. In the event that the CGL Coverage parts of the St. Paul Policies are triggered by
13 the allegations asserted against the District in the Underlying Lawsuit, there is an actual and
14 justiciable controversy whether the coverage afforded by the St. Paul Policies may be primary,
15 co-primary, or excess to other available insurance.

16 104. The October 1, 2001 – October 1, 2003 St. Paul Policies exclude coverage for
17 *bodily injury, personal injury, or medical expenses* that result from any sexual abuse committed
18 by any person who otherwise qualifies as a *protected person*.

19 105. There is an actual and justiciable controversy whether the allegations asserted
20 against the District in the Underlying Lawsuit concern *bodily injury* that resulted from any sexual
21 abuse committed by any person who otherwise qualifies as a *protected person*.

22 106. The St. Paul Policies require that the District cooperate with St. Paul in the event
23 of any loss or claim.

1 107. There is an actual and justiciable controversy whether the District has satisfied its
2 duty of cooperation with St. Paul.

3 108. The above list of policy provisions, conditions, endorsements, and exclusions is
4 not an exhaustive list of all potentially applicable provisions, conditions, endorsements, and
5 exclusions. St. Paul reserves the right to later amend this Complaint or later address such other
6 policy provisions, conditions, endorsements, and exclusions as may become relevant or
7 necessary.

8 **2. The St. Paul Pool Policies**

9 109. There is no coverage available to the District under the St. Paul Pool Policies for
10 the damages sought damages sought from in the Underlying Lawsuit.

11 110. The PELP and ALP coverage parts of the St. Paul Pool Policies require protected
12 persona to take certain actions.

13 111. There is an actual and justiciable controversy whether the District and/or SIAW
14 have fulfilled their duties to St. Paul with respect to the claims at issue in the Underlying Lawsuit.

15 112. The insuring agreement of the PELP coverage part of the St. Paul Pool Policies
16 provides coverage for *bodily injury* or *property damage* that is caused by a covered *event*,
17 provided that the *bodily injury* or *property damage* occurs during a St. Paul Policy period.

18 113. There is an actual and justiciable controversy as to whether any of the damages
19 sought from the District involve claims for *bodily injury* as that term is defined in the St. Paul
20 Pool Policies.

21 114. There is an actual and justiciable controversy as to whether any of the damages
22 sought from the District involve an *event* as that term is defined by the PELP coverage part of
23 the St. Paul Pool Policies.

1 115. There is an actual and justiciable controversy as to whether the District has
2 liability for *bodily injury* caused by a covered *event* as those terms are defined by the PELP
3 coverage part of the St. Paul Pool Policies.

4 116. There is an actual and justiciable controversy as to whether any *bodily injury* that
5 was allegedly caused by a covered *event* occurred during any St. Paul Pool Policy period.

6 117. The PELP coverage part of the St. Paul Pool Policies provides coverage for
7 amounts that an insured is legally obligated to pay as damages for *personal injury* that is caused
8 by a *personal injury offense* which happens during a St. Paul Pool Policy period.

9 118. There is an actual and justiciable controversy as to whether any of the damages
10 sought from damages sought from the District involve claims for *personal injury* as that term is
11 defined by the PELP coverage part of the St. Paul Pool Policies.

12 119. To the extent that the damages sought from damages sought from the District
13 involve claims for the recovery of *personal injury* damages, there is an actual and justiciable
14 controversy as to whether such damages were caused by a *personal injury offense* as that term is
15 defined by the PELP coverage part of the St. Paul Pool Policies.

16 120. To the extent that damages sought from the District involve claims for *personal*
17 *injury*, there is an actual and justiciable controversy as to whether such claims resulted in
18 damages, which is required to implicate coverage for a *personal injury offense*.

19 121. To the extent that the damages sought from the District involve claims for
20 *personal injury* caused by a *personal injury offense*, there is an actual and justiciable controversy
21 as to whether such claims were caused *personal injury offense* that happened during any St. Paul
22 Pool Policy period.
23

1 122. To the extent that the insuring agreement of the PELP coverage part of the St.
2 Paul Pool Policies is applicable to any of the damages sought in the Underlying Lawsuit, the
3 PELP coverage part contains exclusions that may preclude coverage for some or all of the
4 damages sought in the Underlying Lawsuit.

5 123. Pursuant to the PELP coverage part of the St. Paul Pool Policies, coverage is
6 excluded for liability that results from the District or its personnel deliberately breaking the law.

7 124. There is an actual and justiciable controversy as to whether any of the damages
8 sought from the District in the Underlying Lawsuit result from the District or its personnel
9 deliberately breaking the law.

10 125. Pursuant to the PELP coverage part of the St. Paul Pool Policies, coverage is
11 excluded for any *bodily injury* or *property damage* that was expected or intended from the
12 standpoint of the District.

13 126. There is an actual and justiciable controversy to whether any of the damages
14 sought from the District in the Underlying Lawsuit arise from *bodily injury* or *property damage*
15 that was expected or intended from the standpoint of the District.

16 127. Pursuant to the PELP coverage part of the St. Paul Pool Policies, coverage is
17 excluded for any punitive damages awarded as a part of a judgment or agreed to as part of a
18 settlement.

19 128. There is an actual and justiciable controversy as to whether the PELP coverage
20 part of the St. Paul Pool Policies provides coverage for any punitive damages.

21 129. To the extent that some or all of the damages sought in the Underlying Lawsuit
22 are within the scope of the PELP coverage part of the St. Paul Pool Policies, there is an actual
23

1 and justiciable controversy as to whether St. Paul has or had any duty to defend the District under
2 the PELP coverage part of the St. Paul Pool Policies in the Underlying Lawsuit.

3 130. The PELP coverage part of the St. Paul Pool Policies contains a \$100,000 self-
4 insured retention (hereinafter “SIR”) for “each accident, event, offense, or wrongful act.”

5 131. To the extent the District has liability in the Underlying Lawsuit arising from
6 separate accidents, events, offenses, or wrongful acts, there is an actual and justiciable
7 controversy as to whether the District is obligated to satisfy an SIR for each such separate
8 accident, event, offense, or wrongful act.

9 132. There is an actual and justiciable controversy as to whether the District’s SIR
10 obligations under the PELP coverage part can be satisfied in whole or part by payment(s) from
11 third parties.

12 133. No individual officials and/or employees of the District are named as defendants
13 in the Underlying Lawsuit.

14 134. To the extent that individuals are named as defendants in the Underlying Lawsuit,
15 there is an actual and justiciable controversy whether such individuals qualify as *protected*
16 *persons* under the PELP coverage part of the St. Paul Pool Policies.

17 135. Pursuant to the PELP coverage part of the St. Paul Pool Policies, coverage is only
18 potentially afforded if the liability of such individuals arises out of the performance of their duties
19 as elected or appointed officials or in the course and scope of their employment with the District.

20 136. There is an actual and justiciable controversy as to whether any damages will be
21 sought from individuals and officials and/or employees of the District and whether such
22 potentially liability arises out of the performance of their duties as elected or appointed officials
23 or in the course and scope of their employment with the District.

1 137. Pursuant to the PELP coverage part, to the extent that there is other valid and
2 collectible insurance available to the District for purposes of the claims asserted in the Underlying
3 Lawsuit, the coverage provided under the PELP coverage part of the St. Paul Pool Policies is
4 excess over proper exhaustion of the applicable limits of such other insurance.

5 138. To the extent that the St. Paul Pool Policies provide coverage, there is an actual
6 and justiciable controversy as to whether the PELP coverage is excess over other insurance.

7 139. The insuring agreement of the ALP coverage part provides coverage for amounts
8 that an insured becomes legally liable to pay as damages for loss that results from the conduct of
9 duties by or for an educational institution and is caused by a *wrongful act* committed on or after
10 the retroactive date and before this agreement ends.

11 140. There is an actual and justiciable controversy as to whether any of the damages
12 sought from the District involve a *wrongful act* as that term is defined in the ALP coverage part
13 of the St. Paul Pool Policies.

14 141. To the extent that the damages sought from the District involve a *wrongful act*,
15 there is an actual and justiciable controversy as to whether such *wrongful act* was committed on
16 or after the retroactive date and before the expiration of the applicable St. Paul Pool Policy period.

17 142. There is an actual and justiciable controversy as to whether any of the damages
18 sought from the District involve conduct of duties on behalf of an educational institution.

19 143. The ALP coverage part of the St. Paul Pool Policies requires that claims or suits
20 be reported during the policy period, or a reporting period if applicable.

21 144. There is an actual and justiciable controversy as to whether any claim or suit was
22 made against and/or reported by the District during an applicable St. Paul Pool Policy period, or
23 a reporting period if applicable.

154. St. Paul is entitled to Declaratory Judgment in its favor, specifically including a judicial determination that it does not owe any coverage obligations to the District under the PELP coverage parts of the St. Paul Pool Policies for the claims asserted against the District in the Underlying Lawsuit.

155. St. Paul is entitled to Declaratory Judgment in its favor, specifically including a judicial determination that it does not owe any coverage obligations to the District under the ALP coverage parts of the St. Paul Pool Policies for the claims asserted against the District in the Underlying Lawsuit.

1. For a declaration that St. Paul owes no defense obligation to the District with respect to the Underlying Lawsuit under the CGL coverage parts of the St. Paul Policies.

2. For a declaration that St. Paul owes no defense obligation to the District with respect to the Underlying Lawsuit under the PELP coverage parts of the St. Paul Pool Policies.

3. For a declaration that St. Paul owes no defense obligation to the District with respect to the Underlying Lawsuit under the ALP coverage parts of the St. Paul Pool Policies.

4. For a declaration that St. Paul owes no indemnity obligation to the District with respect to the Underlying Lawsuit under the CGL coverage parts of the St. Paul Policies.

1 5. For a declaration that St. Paul owes no indemnity obligation to the District with
2 respect to the Underlying Lawsuit under the PELP coverage parts of the St. Paul Pool Policies.

3 6. For a declaration that St. Paul owes no indemnity obligation to the District with
4 respect to the Underlying Lawsuit under the ALP coverage parts of the St. Paul Pool Policies.

5 7. For all interest allowed by law.

6 8. For attorney fees and costs allowed by statute and law.

7 9. For other and further relief as the Court deems just and equitable.

8 DATED this 26th day of December, 2017.

9 LEATHER & ASSOCIATES, PLLC

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11 /s/ Eric J. Neal

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